

## Federal Communications Commission

DA 00-1112

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Moncks Corner, Kiawah Island, and  
Sampit, South Carolina

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MM Docket No. 94-70  
RM-8474  
RM-8706

FCC MAIL SECTION  
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0101-1000000000

**MEMORANDUM OPINION AND ORDER**  
**(Proceeding Terminated)**

Adopted: May 10, 2000

Released: May 19, 2000

By the Chief, Allocations Branch:

I. Introduction

1. The Allocations Branch has before it a Petition for Reconsideration filed by Sampit Broadcasters ("SB"), that appeals the Report and Order in this proceeding<sup>1</sup> insofar as it refused to allot Channel 289A to Sampit, South Carolina (RM-8706). L.M. Communications II of South Carolina, Inc. ("LMC"), the licensee of FM broadcast station WNST, Moncks Corner, South Carolina,<sup>2</sup> filed an Opposition to SB's Petition for Reconsideration<sup>3</sup> and SB filed a Reply to LMC's Opposition. The Allocations Branch also has before it a Petition for Reconsideration filed by LMC that appeals the Report and Order insofar as it refused to grant LMC's proposal to substitute Channel 288C2 for Channel 287C3 at Moncks Corner, South Carolina, reallocate Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina and modify Station WNST (FM)'s license accordingly (RM-8474). SB filed an Opposition to LMC's Petition for Reconsideration and LMC filed a Reply to SB's Opposition.<sup>4</sup>

<sup>1</sup> 11 FCC Rcd 8630 (Allocations Br. 1996).

<sup>2</sup> As explained in footnote 2 of the Report and Order, when the petition for rule making was originally filed for RM 8474, Ceder Carolina Limited Partnership was the permittee of Station WJYQ(FM), Channel 287C3, Moncks Corner, South Carolina. Subsequently, Station WJYQ(FM)'s license and construction permit were involuntarily assigned to Orville Ronald Brandon, court-appointed Receiver. Later, the construction permit and license were assigned to L.M. Communications II of South Carolina, Inc. and the call sign was changed from WJYQ(FM) to WNST(FM).

<sup>3</sup> On October 4, 1996, with consent of counsel for SB, LMC requested an extension of time to October 18, 1996 to file its Opposition. We hereby grant LMC's request for an extension of time. We note that LMC's Opposition was filed on October 18, 1996.

<sup>4</sup> On September 30, 1996, with consent of counsel to SB, LMC requested an extension of time to and including

For the reasons stated below, we grant both petitions for reconsideration to the extent indicated and we grant LMC's proposal.

## II. Background

2. LMC seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). LMC observes that the requested reallocation to Kiawah Island is mutually exclusive with the present allotment of Channel 287C3 at Moncks Corner, South Carolina. LMC claims that the substitution of Channel 288C2 for Channel 287C3 at Moncks Corner (population 5,607) and the reallocation of Channel 288C2 to Kiawah Island (population 718) would provide Kiawah Island with its first local aural transmission service and would not deprive Moncks Corner of its sole local aural transmission service.<sup>5</sup> SB submitted a counterproposal to allot Channel 289A to Sampit, South Carolina as a first local aural transmission service. The Report and Order found both proposals to be technically and/or legally deficient. Consequently, it did not analyze the Kiawah Island proposal under the Commission's change of community of license policies or compare the Kiawah Island and Sampit proposals under the Commission's FM allotment priorities.

3. The Report and Order observed that the Commission generally presumes in rule making proceedings that a technically feasible site is available, although that presumption is rebuttable. In its comments, SB asserted that the transmitter site proposed in the Notice of Proposed Rule Making (NPRM)<sup>6</sup> was located in marshland and was located too close to an airport to be utilized as the proposed transmitter site. In response to these allegations, LMC argued that the Commission is not usually concerned in finding a particular, useable transmitter site at the allotment stage, but considers arguments concerning the suitability of a particular site at the application stage. LMC's reply comments stressed that SB had not demonstrated that no suitable transmitter site was available within the referenced site zone. The Report and Order determined that although the entire area surrounding the proposed transmitter site is about 130 square kilometers (50 square miles), it appears that the area is marshy and close to an airport. Further, the Report and Order found that the Commission did not consider a marshy area to constitute an available site because "it is doubtful that permission would be granted for a transmitter site in any of the area." Moreover, the Federal Aviation Administration (FAA) advised the Commission that it is unlikely that a 150 meter tower (492 feet) (or even a 50 meter tower (164 feet)) would be approved at the proposed site because of its proximity to an airport, as well as the possibility that the area may be too marshy for construction. The Report and Order concluded that there did not appear to be a suitable or available site for upgrading Channel 287C3 to Channel 288

October 18, 1996, to reply to SB's Opposition. We hereby grant LMC's request for an extension of time. We note that LMC's Reply was filed on October 18, 1996.

<sup>5</sup> Station WM CJ (AM) is also licensed to Moncks Corner.

<sup>6</sup> 9 FCC Rcd 3136 (1994).

C2 and reallocating the channel to Kiawah Island.

4. Turning to SB's counterproposal to add Channel 289A to Sampit, South Carolina, the Report and Order held that Sampit did not appear to be a "community" for allotment purposes. It observed that the 1995 Rand McNally Commercial Atlas lists Sampit as having a population of only 150 persons and Sampit is neither incorporated nor listed in the U.S. Census.<sup>7</sup> It also noted that although SB listed thirty-nine political, social, and commercial organizations, SB had failed to give the addresses of the entities and had not demonstrated that those entities intended to serve the needs of Sampit as opposed to the communities of Georgetown or Andrews.<sup>8</sup> Further, the Report and Order held that no statements or affidavits from actual residents of Sampit had been submitted to indicate that they perceived themselves to be part of a Sampit community.<sup>9</sup> Because the Report and Order did not find that Sampit, South Carolina, was a "community" for allotment purposes, it refused to amend the FM Table of Allotments by adding Channel 289A at Sampit.

### III. Pleadings and Discussion

#### A. Availability and Suitability of LMC's Transmitter Site

5. LMC observes that the Commission does not usually require detailed studies regarding the availability or suitability of a particular site in rule making proceedings to allot FM channels, beyond the basic requirement that an adequate signal be placed over the community of license from an identifiable site which conforms to the spacing rules.<sup>10</sup> LMC is aware that the Report and Order noted that the presumption of site availability may be rebutted and that the Commission would then consider the reasonable likelihood that a suitable site will be available. Nevertheless, LMC claims that the Commission, in contrast to its usual practice, did not provide LMC with notice that the availability of a specific site would be considered at the allotment stage and grant it the opportunity to supplement its response with further technical information regarding site availability. LMC also argues that SB failed to attempt to make any showing that there is no site available from which Station WNST can operate which complies with the Commission's signal coverage and separation rules. Nevertheless, in an effort to end any speculation regarding the likelihood of locating a suitable site to operate on Channel 288C2 serving Kiawah Island, South Carolina, LMC has proposed new coordinates for its transmitter site [Latitude 32-38-57 North; Longitude, 80-02-11 West (NAD-1927)], and submitted a letter from the

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<sup>7</sup> The Report and Order notes that the Commission has stated that geographical location is not sufficient to establish "community" status, citing Vimville, Mississippi, 55 RR 2d 256 (Policy and Rules Div. 1983), and Hannibal, Ohio, 6 FCC Rcd 2144 (Allocations Br. 1991).

<sup>8</sup> The Report and Order states that the Commission has rejected claims of "community" status where a nexus has not been shown between the political, social, and commercial organizations and the community in question, citing Gretna, Florida, et al., 6 FCC Rcd 633 (Allocations Br. 1991), and cases cited therein.

<sup>9</sup> The Report and Order cites Semora, North Carolina, et al., 5 FCC Rcd 934 (1990).

<sup>10</sup> LMC cites Key West, Florida, 3 FCC Rcd 6423 (Policy and Rules Div. 1988) for this proposition.

owner of the property located at those coordinates that he would negotiate in good faith to lease his property to LMC for construction of a 500 foot antenna tower and a letter from LMC's airspace consultant concluding that the FAA would issue a No Hazard to Air Navigation ruling allowing LMC to operate from an antenna tower 500 feet above ground level at a fully spaced site located at those coordinates.

6. In its Opposition pleading, SB argues that LMC was not denied adequate notice that the availability of a specific transmitter site would be considered at the allotment stage. Thus, SB observes that the Administrative Procedure Act [5 U.S.C. §556(d)] provides that "the proponent of a rule or order has the burden of proof," and that the Notice of Proposed Rule Making ("Notice") in this proceeding<sup>11</sup> specifically stated, at 9 FCC Rcd 3137, that "Proponent(s) will be expected to answer whatever questions are presented in initial comments." SB observes that it raised the question of the suitability of LMC's proposed transmitter site both as to terrain and its proximity to the Charleston Executive Airport, and the Commission found LMC's response to be inadequate. Thus, SB contends, LMC simply failed to carry its burden of proof. SB also argues that there are Commission decisions indicating that the question of whether a suitable site can be found within the transmitter reference point is always in issue in an FM rule making proceeding.<sup>12</sup> SB notes that the new transmitter site submitted by LMC is more than five miles from its original reference site and that LMC's new transmitter site proposal is raising new matter in its petition that is expressly prohibited by §1.429 of the Commission's Rules and amounts to a late counterproposal to the Notice herein in violation of §1.420(c) of the Rules. SB notes that §1.420(c) provides that counterproposals are timely filed when they are filed by the time established for filing comments on a notice of proposed rule making, and argues that the time for filing comments in this case elapsed on August 26, 1994.<sup>13</sup>

7. LMC filed a Reply to SB's Opposition, in which it points out that in rule making proceedings to allot FM channels, the Commission is concerned with the availability and suitability of an antenna site in a marginal situation only to the extent of whether, if a channel were to be assigned, there is a reasonable assurance that a station would be able to provide adequate service to the community. LMC stresses the point that the question of whether a specific site is legally available and suitable is a matter to be considered in connection with an application for a construction permit for the use of a channel.<sup>14</sup> Thus, LMC argues that what is required of petitioners in allotment proceedings is a reasonable assurance that a theoretical site or "potential sites" exist(s) which meet the Commission's

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<sup>11</sup> 9 FCC Rcd 3136 (Allocations Br. 1994).

<sup>12</sup> In support of this proposition, SB cites Ocrakoake et al., North Carolina, 9 FCC Rcd 2011, 2012 (Allocations Br. 1994).

<sup>13</sup> LMC filed its Petition for Reconsideration on August 19, 1996.

<sup>14</sup> LMC cites the Report and Order in Randolph and Brandon, Vermont, 6 FCC Rcd 1760, 1761 n.4 (Allocations Br. 1991) ("Randolph") for this principle.

various technical rules.<sup>15</sup> LMC observes that in Randolph, the Commission's Report and Order, after determining that the reference coordinates proposed by the petitioner were located in a swamp area, stated: "we have, consistent with our approach in similar situations, [footnote omitted] confirmed that another site...is available on dry land that meets the spacing requirements."<sup>16</sup> In Rockport, the Commission's Report and Order approved an upgrade proposal involving the use of reference coordinates located sixteen miles from the originally proposed reference coordinates.<sup>17</sup> LMC also notes that, in Homerville, Lakeland and Statenville, Georgia, 8 FCC Rcd 2953, 2954 (1993) ("Homerville"), in response to a petition for reconsideration of its Report and Order, the Commission specified an alternate site that complied with the Commission's various technical rules. LMC stresses that the Commission did not consider the change in reference coordinates for the transmitter site in Homerville to be a counterproposal. Thus, LMC contends, it is well within Commission precedent for LMC to provide the Commission with alternate reference coordinates to demonstrate that there is a suitable site within the area meeting the Commission's minimum separations requirements for Channel 288C2.

8. After having reviewed the relevant facts and circumstances concerning LMC's proposed transmitter site, we conclude that LMC has demonstrated that it has reasonable assurance that there is a suitable transmitter site available to effectuate its proposal. Further, we find that LMC's change in transmitter site does not constitute a counterproposal that has been untimely filed. Rather, LMC has made an adjustment in its original proposal that is less radical than adjustments made in other cases. See, e.g., Rockport. In brief, we find that the new transmitter site proposed by LMC can be considered pursuant to Section 1.429(b)(3) of the Commission's Rules. We observe that the Notice in this proceeding proposed the same transmitter site proposed by LMC. Thus, that site had received at least the preliminary approval of the staff. SB first raised the question of the site's unsuitability in its comments. In this light, we can understand LMC's initial questioning of SB's allegations as well as the difficulty of finding a new suitable site during the short period between the deadlines for filing comments and reply comments. The referenced rule section allows the Commission to consider new matters not raised previously if the Commission determines that consideration of such matters is in the public interest. We find that it is in the public interest to consider LMC's new transmitter site because it will avoid further litigation on the question of whether there is a suitable transmitter site available to effectuate LMC's proposal and because it will enable us to rule on this issue concerning the viability of the proposed allotment on a complete record.

#### B. Is Sampit a Community?

<sup>15</sup> Id. LMC also cites Stamping Ground, Kentucky, 5 FCC Rcd 1772 (Allocations Br. 1990) for this principle.

<sup>16</sup> Randolph at 1761 n.8, citing the Report and Order in Rockport, Gregory, Alice and Armstrong, Texas, 4 FCC Rcd 8075, 8076 (Allocations Br. 1989) ("Rockport").

<sup>17</sup> Rockport, 4 FCC Rcd at 8076.

9. In its Petition for Reconsideration, SB argues that the Commission should overrule the Report and Order's finding that Sampit, South Carolina, is not a "community" for allotment purposes pursuant to Section 307(b) of the Communications Act, and allot FM Channel 289A to Sampit, South Carolina. SB provides additional evidence to support its claim that Sampit is a community. In response to the Report and Order's observation that SB failed to give the addresses of the various political, social, and commercial organizations in Sampit, SB provides declarations under penalty of perjury from 13 persons who provide their addresses and claim to operate 12 different businesses in Sampit that identify with Sampit and who claim that they intend to serve the needs of Sampit as opposed to other communities in the vicinity. Further, SB has provided declarations from seven individuals who represent civic organizations located in Sampit who provide their addresses and state that those organizations identify with Sampit and intend to serve the needs of Sampit residents as opposed to residents of other communities in the vicinity. In addition, it has submitted 15 declarations from persons associated with Sampit Elementary School who give their addresses and state that the school identifies with the community and intends to serve the needs of Sampit residents as opposed to residents of communities in the vicinity. In response to the Report and Order's statement that the Commission did not have any statements or affidavits from actual residents of Sampit indicating that they perceive themselves to be part of the Sampit community, SB has submitted 25 declarations from persons who give their addresses and state that they perceive themselves to be members of the Sampit community. SB also includes a letter from the Administrator of Georgetown County, South Carolina, and a letter from a State Senator representing the area including Sampit in the South Carolina State Senate. Both letters assert that Sampit is a community. SB argues that the foregoing evidence proves that Sampit is a "community" for allotment purposes.

10. In its Opposition to SB's Petition for Reconsideration, LMC asserts that the Report and Order determined that Sampit, South Carolina is not a "community" for allotment purposes because SB has not shown any nexus between the political, social and commercial organizations mentioned and the community in question. Pursuant to Section 1.429(b) of the Commission's rules, LMC argues, the Commission must deny Sampit's Petition for Reconsideration on procedural grounds, because Sampit failed to present the information contained in its petition on a timely basis, namely, during the comment and reply comment period, and has failed to provide any compelling reason why it was unable to submit this information on a timely basis. Thus, LMC argues, the new information provided in SB's petition was known at the time it filed its counterproposal and could have been presented then. LMC also claims that the facts included in SB's petition do not relate to any changed circumstances and the public interest does not require that they be considered. LMC asserts that the Commission denied a similar petition for reconsideration as procedurally defective in Ellison Bay, Wisconsin ("Ellison").<sup>18</sup> LMC claims that, in Ellison, the Commission rejected the petitioner's attempt to submit a list of businesses, including Ellison Bay addresses, as evidence of the area's "community" status because the information could have been obtained through the exercise of ordinary diligence and submitted at the comment or reply comment stage of the proceeding. Further, LMC contends that even if the evidence

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<sup>18</sup> 10 FCC Rcd 8082 (Policy and Rules Div. 1995).

proffered by SB's petition were considered, SB has not demonstrated that Sampit constitutes a "community" for allotment purposes because Sampit has no form of local government and no post office and SB's petition contained no evidence that the residents of Sampit receive any municipal services, such as police or water, from any organization or entity associated with Sampit. Moreover, LMC argues, SB has not rebutted the Report and Order's conclusion that Sampit is a "widely scattered rural area that appears to be similar in size to a township and could contain several communities."<sup>19</sup>

11. SB filed a Reply to LMC's Opposition to SB's Petition for Reconsideration. In its Reply, SB claims that its counterproposal in this proceeding made a prima facie case that the Georgetown County Planning Commission recognized Sampit as a "defined area" with a population of about 2,807 residents,<sup>20</sup> that the "defined area" contained at least thirty-nine businesses, religious entities and civic organizations, and that Sampit was recognized as a community in the 1995 Rand McNally Commercial Atlas. SB claims that the Commission's decision in Beacon Broadcasting<sup>21</sup> supports SB's contention that its counterproposal made a prima facie case that Sampit is a community. Thus, SB argues that in Beacon, the Commission held that a showing by a local governmental official that there exists a distinct area recognized by local governmental officials to be a community is sufficient to establish community status. Further, SB asserts that the evidence it has submitted as part of its Petition for Reconsideration, in support of its prima facie case, can be admitted pursuant to Section 1.429(b). The referenced rule allows the introduction of new facts in a petition for reconsideration where consideration of the facts relied on is in the public interest. SB contends that since the establishment of a first local service to a community is the third priority of FM allotments<sup>22</sup> and since SB has submitted further proof that Sampit is a community for allotment purposes, SB is entitled to claim the third FM priority.

12. As a procedural matter, we find that we can consider the new information submitted by SB to demonstrate that Sampit is a community pursuant to Section 1.429(b)(3) of the Commission's Rules. The referenced rule section allows new matters not previously presented to the Commission to be considered if the Commission finds that such consideration is in the public interest. We observe that we made the same kind of procedural decision concerning LMC's newly proposed transmitter site at paragraph 8, supra. Fairness and our interest in ruling on the full merits of this proceeding dictate a

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<sup>19</sup> 11 FCC Rcd 8630, 8637-38 (1996).

<sup>20</sup> SB refers to Exhibit 4B of its counterproposal. That exhibit contains a letter from David Essex, who is the Assistant Planning Director of the Georgetown County Planning Commission. The letter states that the Sampit area of Georgetown County meets the definition of "community," has a defined center, a small commercial core, a school, several churches and an active community organization (Sampit Community Organization, Inc.). The letter refers to an attached map (Exhibit 4C) of the area known as Sampit and recognizes that the community boundary shown on the map is subject to interpretation. Nevertheless, the letter claims that the area depicted on the map has about 1000 houses and 2,807 persons.

<sup>21</sup> 2 FCC Rcd 3469, 3471 (1987) ("Beacon"); recon. denied, 2 FCC Rcd 7562; aff'd. sub nom. New South Broadcasting Corp. v. FCC, 879 F.2d 867 (D.C. Cir. 1989).

<sup>22</sup> SB cites Revision of FM Channel Policies and Procedures, 90 FCC 2d 88, 92 (1982) for this proposition.

similar result with respect to the issue of whether Sampit is a community. In this regard, we observe that arguments raised by LMC concerning whether Sampit is a community were first raised in reply comments filed in response to a Public Notice soliciting pleadings about SB's proposal to allot Channel 289A to Sampit, South Carolina, to which no further comment period is provided by the Commission's Rules. Thus, LMC's first opportunity to respond to questions concerning the issue of whether Sampit was a community was in its petition for reconsideration of the Report and Order in this proceeding.<sup>23</sup> Having considered the new data submitted by SB, we believe that Sampit can qualify as a "community" for allotment purposes. Thus, Sampit has a core group of business, social, religious, and civic organizations that claim to identify with and serve the needs of Sampit residents and a group of citizens has submitted declarations identifying themselves and claiming that they perceive of themselves as part of a Sampit community. The fact that Sampit has no local government and provides no municipal services such as police or fire protection to Sampit residents does not prohibit a finding that Sampit is a "community."<sup>24</sup>

13. Although Sampit is a community, the size of that community is uncertain. The 1998 Rand McNally Commercial Atlas lists Sampit as having a population of 150. A letter from David Essex, who is the Assistant Planning Director of the Georgetown County Planning Commission, was submitted as Exhibit 4B to SB's counterproposal. That letter identifies an area on a local map known as Sampit (Exhibit 4C) and recognizes that the community boundary shown on the map is "subject to interpretation." The letter claims that the area depicted has about 1000 houses and 2,807 persons. It would appear that the number of houses and persons that SB and Mr. Essex consider to be part of the community of "Sampit" is greatly inflated. In this regard, Sampit is located in Georgetown County, South Carolina. The 1990 U.S. Census lists six county "divisions" of Georgetown County, including a "Sampit-Santee Division." The latter division had a population of 3,440 and a total of 1,201 housing units in 1990, a land area of 233.2 square miles, an average population density of 14.8 persons per square mile, and an average of 5.2 housing units per square mile.<sup>25</sup> Nevertheless, SB is claiming that "Sampit" would theoretically include more than eighty percent of the housing units and population contained in the "Sampit-Santee Division" of Georgetown County, South Carolina. The foregoing

<sup>23</sup> Further, we have determined that our decision in the "Ellison" case, supra at para. 10, is not contrary to our decision here. Ellison denied a petition for reconsideration on two grounds. First, the petitioner was found not to have demonstrated that the new matter it submitted was the type of new matter permitted under Section 1.429 of the Commission's Rules. The new matter submitted by the petitioner appeared to be generally available information that could have been obtained through the exercise of ordinary diligence and submitted at the comment or reply comment stage of that proceeding. Second, the case ruled on the merits of that new information and found that it did not prove the petitioner's case.

<sup>24</sup> See, e.g., Semora, North Carolina, et al., 5 FCC Rcd 934, 935 (1990).

<sup>25</sup> Bureau of the Census, U.S. Dep't of Commerce, Pub. No. 1990 CPH-2-42, Table 8. Population and Housing Units, 1970 to 1990; Area Measurements and Density: 1990 in 1990 Census of Population and Housing, South Carolina, 14.



assertion appears to be without merit. For example, the 1990 U.S. Census does not list any towns or CDP's (Census Designated Places) under the "Sampit-Santee Division." A CDP contains 1,000 or more persons if outside the boundaries of an urbanized area.<sup>26</sup> Therefore, it would appear reasonable to conclude that the community of Sampit has less than 1,000 persons. Further, given the fact that the Sampit-Santee Division has an average of 5.2 housing units per square mile, it would appear that Sampit has only a fraction of the 1,201 houses contained in the entire 233.2 square miles comprising the Sampit-Santee Division of Georgetown County, South Carolina. In brief, the only number we can rely upon as defining the population of the community of "Sampit" is the 150 persons referred to in the 1998 Rand McNally Commercial Atlas. The area described as "Sampit" by SB's Exhibits 4B and 4C appears to be what the Report and Order described as a "widely scattered rural area that appears to be similar in size to a township and could contain several communities."<sup>27</sup> Therefore, we shall assume that the community of Sampit has a population of about 150.

### C. Comparison of the Proposals

14. SB contends that if LMC's proposal were to be compared to SB's proposal pursuant to Section 307(b) of the Communications Act to determine which proposal is preferable, SB's proposal should be awarded a dispositive preference because LMC's proposal would constitute, at best, a 22nd service to the Charleston Urbanized Area, while SB proposes a first local service to Sampit. Specifically, SB claims that a station seeking to reallocate a channel from a rural community to a suburban community of a nearby Urbanized Area, such as LMC's Station WNST(FM), must make a showing that the proposed community of license is independent of the Urbanized Area, if such a station will place a city-grade (70 dBu) signal over 50 percent or more of the Urbanized Area.<sup>28</sup> Further, SB asserts that LMC's new proposal would result in a loss of service to Moncks Corner, which is LMC's current community of license. In summary, SB claims that LMC has failed to show why the Report and Order should be modified to allot Channel 288C2 to Kiawah Island. Rather, SB submits, the Commission should allot FM Channel 289A to Sampit.

15. In response to SB's allegation that LMC's proposal should not be considered as an additional radio service to the Charleston, South Carolina, Urbanized Area, LMC states that the predicted 3.16 mV/m contours of both the proposed Kiawah Island operation on Channel 288C2 and the present LMC operation on Channel 287C3 cover more than 50 percent of the Charleston urbanized area. Moreover, LMC argues that its current proposal will not result in a significant loss of service to the area presently served by WNST at Moncks Corner. In its Reply to SB's Opposition to LMC's Petition for Reconsideration, LMC submits a Technical Statement demonstrating that there will be a predicted 1 mV/m loss in service of only 1,794 square kilometers and a gain area of 1,786 square kilometers, and observes that neither the gain nor loss area can be considered "underserved" because

<sup>26</sup> Id. at page A-10.

<sup>27</sup> 11 FCC Rcd 8630, 8637-38 (Allocations Br. 1996).

<sup>28</sup> In support of this argument, SB cites Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (Allocations Br. 1995) ("Headland").

both are served by more than five other AM and FM broadcast stations.<sup>29</sup> LMC concludes that its proposal will further the public interest by providing first local service to Kiawah Island and will not deprive Moncks Corner of its sole existing local service.

16. Under our change of community policies, we must consider whether retaining Channel 287C3 at Moncks Corner, South Carolina, or allotting channel 288C2 at Kiawah Island, South Carolina, would constitute a preferential arrangement of allotments under Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] Since Moncks Corner already has Station WMCJ(AM) providing local service to Moncks Corner, we find that providing a first local service at Kiawah Island with Channel 288C2 is preferred under priority (3) over providing a second local service to Moncks Corner under priority (4). Moreover, we note that the gain and loss areas, as described in para. 15, supra, are served by more than five other AM and FM broadcast stations, and thus are considered to be receiving adequate service.

17. We now compare the applicants' proposals pursuant to Section 307(b) of the Communications Act and the Commission's policies thereunder to determine which community should be preferred. Since Kiawah Island is not in the Charleston, South Carolina Urbanized Area, and since LMC is already providing 3.16 mV/m service to more than 50 percent of the Charleston Urbanized Area on Station WNST and will continue to provide such service to more than 50 percent of that urbanized area if we grant its proposal, we do not believe that LMC should be required to submit a Tuck analysis to show that Kiawah Island is sufficiently independent of Charleston, South Carolina to merit a first local service preference.<sup>30</sup> Thus, LMC's Station WNST (FM) is not "moving into" the Charleston Urbanized Area, but is already there. See Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (Allocations Br. 1996) and East Los Angeles, et al., California, 10 FCC Rcd 2864 (Allocations Br. 1995). In brief, we do not view LMC as proposing an additional radio service to the Charleston Urbanized Area. Moreover, since LMC will be providing the first local service to Kiawah Island<sup>31</sup> and

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<sup>29</sup> Exhibit 2 of SB's Attachment 1 to its Opposition to LMC's Petition for Reconsideration demonstrates that LMC's new proposal will not provide 1 mV/m coverage of Moncks Corner.

<sup>30</sup> See also Huntington Broadcasting Co., v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). See also Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (Allocations Br. 1995).

<sup>31</sup> Nobody disputes the fact that Kiawah Island qualifies as a community for allotment purposes. In the rulemaking proceeding that allocated Channel 287C3 to Moncks Corner, South Carolina, the Commission found that Kiawah Island is a community for allotment purposes. See the Second Report and Order in MM Docket No. 91-127, Georgetown et al., 7 FCC Rcd 6522 (Allocations Br. 1992). Further, to the extent that the foregoing Georgetown decision stands for the proposition that the proposal in MM Docket No. 91-127 to substitute Channel 288C2 for Channel 288A at Moncks Corner and to reallocate Channel 288C2 to Kiawah Island was rejected because it would not provide sufficient public interest benefits to warrant the loss of Moncks Corner's sole competitive local transmission service, the Georgetown decision has been overruled by our decision in Fredericksburg, Helotes and Castroville, Texas, 11 FCC Rcd 22317 (Policy and Rules Div. 1996). Thus, in the case before us, we conclude

SB will be providing the first local service to Sampit, South Carolina, both proposals will be treated under the fourth priority of Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982). When comparing communities under priority (4), the more populous community is generally preferred.<sup>32</sup> In this light, LMC must be declared the winner. The U.S. Census lists the population of Kiawah Island as consisting of 718 persons, whereas the most reliable population figure we have for Sampit, South Carolina is that provided by the 1998 Rand McNally Commercial Atlas of 150 persons. As explained above, even if Sampit, South Carolina, can be considered to be a "community" for allotment purposes, SB has not overcome the presumption that Sampit, South Carolina, comprises only 150 persons. Therefore, we grant LMC's proposal to substitute Channel 288C2 for Channel 287C3, reallocate Channel 288C2 from Moncks Corner to Kiawah Island, South Carolina, and modify Station WNST(FM)'s license accordingly.

18. Channel 288C2 can be allotted to Kiawah Island, South Carolina, consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules at LMC's proposed site located at coordinates 32-38-57 NL and 80-02-11 WL.

19. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's rules, IT IS ORDERED, that effective July 3, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel No.</u>
Kiawah Island, South Carolina	288C2
Moncks Corner, South Carolina	-----

20. IT IS FURTHER ORDERED, that pursuant to Section 1.420(i) of the Commission's Rules and Section 316(a) of the Communications Act of 1934, as amended, the license of L.M. Communications II of South Carolina, Inc. for Station WNST(FM), IS MODIFIED to specify operation on Channel 288C2 at Kiawah Island, South Carolina, in lieu of Channel 287C3 at Moncks Corner, South Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for construction permit (FCC Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Rules;

that the public interest benefits of providing a first local service to Kiawah Island override the public interest benefits of retaining a second local service at Moncks Corner.

<sup>32</sup> See, e.g., Northwye, et al., Missouri, 7 FCC Rcd 1449 (Allocations Br. 1992).

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Rules.

21. Pursuant to Commission rule Section 1.1104(3)(1), any party seeking a change in the community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, L.M. Communications II of South Carolina, Inc., licensee of Station WNST(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license and upgrade at Kiawah Island, South Carolina.

22. IT IS FURTHER ORDERED, That the aforementioned Petitions for Reconsideration filed by Sampit Broadcasters and L.M. Communications II of South Carolina, Inc. ARE GRANTED to the extent indicated above and ARE DENIED in all other respects.

23. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau